IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1390 of 1998

in

SPECIAL CIVIL APPLICATIONNo 4952 of 1990

with

CIVIL APPLICATION NO. 956 OF 1999

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BRAHMBHATT BHARATKUMAR HARGOVINDAS

Appearance:

1. LETTERS PATENT APPEAL No. 1390 of 1998

Mr.H.D.Dave, learned A.G.P. for Appellant No.

MR DIPAK C RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 16/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellants - State of Gujarat and D.S.P., Mehsana have challenged in this appeal the judgment and order dated 18.09.1998 passed by Kundan Singh, J (as he then was) in special civil application no. 4952 of 1990 whereby His Lordship allowed the writ petition i.e. special civil application no. 4952 of 1990 filed by the respondent - original petitioner and quashed and set aside the impugned orders dated 22.01.1982 (Annexure `D') and 19.05.1990 (Annexure `H') passed by the D.S.P., Mehsana and they were directed to reinstate the petitioner with full pay and allowances and also to pay all other consequential benefits of service including continuity of service. They were also directed to reinstate the petitioner in service and pay the arrears within three months from the date of producing certified copy of His Lordship's order.

#. This appeal was admitted by the Division Bench of this court on 19.09.2001 and on civil application simple rule was issued and no interim relief was granted so far against the reinstatement. Therefore, the respondent petitioner was already reinstated in service in compliance with the judgment and order dated 18.09.1998 passed by the learned single Judge of this court.

#. From the impugned order dated 22.01.1982 (Annexure `D') passed by D.S.P., Mehsana, it clearly appears that the services of the respondent - original petitioner were terminated only on the ground that he was involved in a criminal case no. 92 of 1981 for the offences under Sections 454, 457 and 380 of the Indian Penal Code and that he was taken on remand. In a criminal trial, he was completely exonerated by the competent criminal court by acquitting him from the charges levelled against him on 31.01.1990. In view of the judgment of the competent criminal court passed in his favour, respondent petitioner had applied before the D.S.P. for setting aside the termination order and reinstating him in service but his application was dismissed by the impugned order dated 19.05.1990 (Annexure `H') passed by the D.S.P., Mehsana on the ground that he was discharged from services and his services were purely temporary.

Therefore, he cannot be reinstated in service. From the impugned order of termination (Annexure `D'), it is clear that though it appears to be an order of termination simpliciter, in reality it is an order of dismissal from service without holding inquiry against him for such a serious charge. Considering this, when the learned single Judge had allowed the writ petition and ordered reinstating the petitioner in service and that in absence of any interim order passed on civil application filed in this appeal, if the respondent - petitioner is already reinstated in service, then there is no question of interference with such orders in this letters patent appeal. However, there is lot of substance in what is submitted by learned A.G.P. Shri Dave that applying principle of "No work no pay", the learned single Judge should not have awarded back wages. In view of the several judgments of the Hon'ble Supreme Court and this court, learned counsel Shri Raval appearing for the respondent - original petitioner also conceded that he would be satisfied with the dismissal of this appeal against the order of reinstatement and will not claim back wages as ordered by the learned single Judge.

#. In view of the above discussion, this appeal is partly allowed to the extent that the judgment and order passed by the learned single Judge awarding full back wages to the respondent - original petitioner is hereby quashed and set aside by maintaining the remaining part of the judgment and order dated 18.09.1998 passed by the learned single Judge whereby the learned single Judge has quashed and set aside the impugned orders date 22.01.1982 (Annexure `D') and 19.05.1990 (Annexure `H') passed by the respondent no. 2 D.S.P., Mehsana and ordered reinstatement of the respondent - petitioner in service with other consequential benefits of service including the continuity of service. However, at the cost of repetition, it is made clear that the respondent petitioner is denied back wages as ordered by the learned single Judge.

#. Accordingly, this appeal is allowed to the aforesaid extent only with no order as to costs.

#. No further orders on the civil application as main appeal itself is disposed of. Rule issued on the civil application is discharged. No costs.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)
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